STATEMENT AS TO JURISDICTION

(Filed June 17, 1952)

(Number and title omitted)

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, and Rule 37(a) of the Federal Rules of Criminal Procedure, the United States submits its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgments of the District Court dismissing the indictments filed below.

OPINION BELOW

The oral opinion of the District Court is not yet reported. A copy of the stenographic transcript thereof is annexed hereto as Appendix A.

JURISDICTION

The minute orders of the District Court dismissing the indictments were entered May 20, 1952. The jurisdiction of the Supreme Court to review on direct appeal an order of the District Court dismissing an indictment, where such dismissal is based on a construction of the statute on which the indictment is founded, is conferred by the Criminal Appeals Act, 18 U.S.C. 3731. See also Rule 37(a)(2), F. R. Crim. P. See *United States* v. *Anderson,* 328 U.S. 699.

QUESTION PRESENTED

The Tobacco Tax Act makes it an offense for anyone, who has shipped cigarettes in interstate commerce to persons other than distributors in a state taxing the use of cigarettes, to fail to forward to the tobacco tax administrator of the state of shipment a memorandum or copy of the invoice covering each shipment. The question presented is whether venue of the offense of failure to forward to the proper official the required reports lies in the district where such official is located.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 3, Section 2, Clause 3 of the Constitution provides:

> The Trial of all Crimes, except in cases of impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; * * *.

The Sixth Amendment to the Constitution provides:

> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, * * *.

Public Law 363, 81st Cong., 1st sess., 63 Stat. 884, 15 U.S.C. 375, et seq., commonly known as the

Jenkins Act or the Tobacco Tax Act provides as follows:

To assist States in collecting sales and use taxes on cigarettes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act the term—

(a) "Person" means any individual, partnership, corporation, or association;

(b) "disposing of" means any transfer for profit;

(c) "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco;

(d) "licensed distributor" means any person authorized by State statute or regulation to distribute cigarettes at wholesale or retail;

(e) "use," in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes;

(f) "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.

SEC. 2. Any person selling or disposing of cigarettes in interstate commerce whereby such cigarettes are shipped to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes shall, not later than the 10th day of each month, forward to the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every such shipment of cigarettes made during the previous calendar month into said State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

SEC. 3. Whoever violates the provisions of this Act shall be guilty of a misdemeanor and shall be fined not more than $1,000 or imprisoned not more than six months, or both.

STATEMENT

Two separate indictments charging violations of the Tobacco Tax Act were returned in the United States District Court for the Eastern District of Louisiana against (1) Purchasing Corporation of America, a Virginia corporation, and its individual officers, and (2) Joseph H. Wilson, doing business as Cooperative Buying Service. The indictment against the corporation and its officials charged that defendants, having shipped cigarettes

from North Carolina and West Virginia to persons in the State of Louisiana who were not licensed distributors of cigarettes, failed to forward to the Collector of Internal Revenue for the State of Louisiana a memorandum or copy of the invoices covering each shipment. The indictment against Wilson was in five counts, charging similar offenses in five separate months, each of which alleged that Wilson, having shipped cigarettes from North Carolina to non-distributors in Louisiana, failed to forward to the Louisiana Collector the required memoranda or invoices.

Each of the defendants moved to dismiss the indictment for lack of jurisdiction, on the ground that the offenses charged had not been committed within the jurisdiction of the District Court for the Eastern District of Louisiana. The two cases were consolidated for argument, and the District Court dismissed both indictments for lack of jurisdiction.

The District Court held that the duty imposed by the Tobacco Tax Act to forward to the appropriate state official the required records of shipment was not the equivalent of a duty to file such records with the appropriate official, and hence that the offense of failure to forward to the state official the necessary reports occurred in the district from which the shipment was sent, rather than in the district of the office to which the reports were to be forwarded.

THE QUESTION IS SUBSTANTIAL

The Tobacco Tax Act requires persons making interstate shipment of cigarettes to "forward to" the appropriate state official of the state to which the cigarettes are shipped memoranda or invoices of each shipment. We submit that the words "forward to" necessarily carry the implication that the required information be furnished to the appropriate official, and contemplate that such official receive and have such information.

The purpose of the statute, apparent on its face, is to provide a means whereby the taxing authorities in the state to which the cigarettes are shipped will be given information that will enable them to enforce state cigarette use taxes. Manifestly, the intent of the statute is to have the information in the hands of the appropriate state official. It is unimportant to the purpose of the statute how the required information is sent; whether it is delivered in person, by messenger, or through the mails. So long as the information reaches the state official, the literal requirements and the purpose of the statute have been met. The words "forward to" are thus used in the statute in the sense of "report to" or "provide".

This conclusion is buttressed by the legislative history of the Tobacco Tax Act which shows that the words "forward to" were understood to mean, "supply," "furnish", or "report to". Thus the House Report on the bill states (H. Rep. 416, 81st Cong., 1st sess., p. 1):

The purpose of this bill is to assist the States in collecting State-imposed sales and use taxes on cigarettes.

For the purpose of accomplishing this objective the bill provides that any person who sells or otherwise disposes of cigarettes in interstate commerce (where shipment is made to other than a distributor licensed by or located in the State of designation) *must provide the tax administrators* in the State into which the shipment is made necessary data upon which to base assessment and collection of the State cigarette tax. The specific information required by this bill is a memorandum or a copy of the invoice containing the name and address of the person to whom the shipment was made and the brand and the quantity of the shipment.

The bill would place no additional burden whatever upon anyone shipping cigarettes to a distributor licensed by or located in the State into which the shipment is made. It would *require information to be furnished* from only those establishments which ship cigarettes to consumers in taxing States from locations outside the State border. (Italics supplied.)

The Senate Report (S. Rep. 644, 81st Cong., 1st sess., p. 1) states:

It would only require information *to be supplied* by establishments which ship cigarettes

> across a State border to consumers in States imposing a tax on cigarettes. (Italics supplied.)

Senator George, in charge of the bill, explained its purpose on the floor of the Senate as follows (95 Cong. Rec. 14016, 14017):

> Under the bill, shipments made by anyone to a regular dealer in cigarettes, or to anyone authorized to make sales of them, are not to be reported in all. No additional burden whatever is placed on the shipper. It is only when he ships to unlicensed and unregistered and undesignated establishments within a State *that he must furnish a copy of the invoice,* or a mere statement, if he wants to, *to the taxing authority of the State* into which the cigarettes are shipped. He must do that within 10 days after the end of each month in which he may have made such shipments. (Italics supplied.)

Representative Doughton in charge of the bill in the House (95 Cong. Rec., p. 6350) states:[1]

---

[1] See also debates in the previous Congress on H.R. 5645, 80th Cong., 2d sess., with respect to a similar law containing the same phrase requiring the shipper to forward reports to the appropriate state official. The bill was described as requiring the shipper "to file with" (94 Cong. Rec. 6708); "to report to" (94 Cong. Rec. 6710), or to "make a report" (94 Cong. Rec. 6719).

> A number of the States have laws imposing a tax on cigarettes. This bill *imposes the duty* upon the distributors of cigarettes in those States *to furnish to the tax authorities* of the States affected and to which the cigarettes are shipped information as to the consignee and the number of cigarettes shipped; in other words, information upon which the taxing authorities of a particular State *may enforce its own tax* laws and collect the taxes that are imposed or levied by the State.

The District Court read the statute as if it contained merely the word "forward". The phrase used is "forward to". That connotes a requirement that the information reach the appropriate official. There is a manifest difference between "drive" and "drive to". Equally, there is a difference between "forward" and "forward to". Cf. cases in which a common carrier who has agreed to forward freight to a destination has been held liable for failure of delivery, even though such failure is the fault of a connecting carrier. *Colfax Fruit Co.* v. *So. Pac. Co.,* 118 Calif. 648; *Davis* v. *Jacksonville Southeastern Line,* 28 S.E. 965, 968 (Mo.); *Christenson* v. *American Express Co.,* 15 Minn. 286.

It is well established that, where reports are to be filed with, or made to, a particular official, the offense of failure to do the required act occurs at the place where the report is to be received or filed.

Rumely v. *McCarthy*, 250 U.S. 283; *United States* v. *Lombardo*, 241 U.S. 78; *New York Central and H. H. Railway Co.* v. *United States*, 166 Fed. 267 (C.A. 2). In connection with the filing of income tax returns, 26 U.S.C. 2053(b)(1) provides in pertinent part that income tax returns of individuals "*shall be made to* the collector for the district in which is located the legal residence * * * " of such individual. (Italics supplied.) It was held in *Wampler* v. *Snyder*, 66 F. 2d 195 (App. D.C.), that the words "shall be made" as used in the statute are an equivalent of "shall be filed." And in *Bowles* v. *United States*, 73 F. 2d 772 (C.A.4), it was held that the failure to make the return occurred in the district where the return was to be filed, the court stating (p. 774):

> The defendant being a resident of the District of Columbia, it became his duty to make his income tax return to the Collector at Baltimore, Maryland, and *failure to make such return* constituted an offense within the District of Maryland. (Italics supplied.)

Since "forward to" has, and was intended to have the same meaning as "making report to" or "filing with", the offense of failure to forward to the proper state officials the required information concerning interstate shipment of cigarettes likewise occurs in the district where the state official has his office.

Any other construction of the venue of the offense will seriously hamper the enforcement of the Tobacco Tax Act. The District Court seems to have assumed, on its construction of the statute, that the duty to forward reports must necessarily arise in the state from which shipment is made. However, since the reports need not be made until the 10th day of the month following the shipment, the place of shipment does not necessarily fix the place of the duty to forward the report. In the instant case, the indictment against the Purchasing Corporation of America alleges that the corporation, a Virginia corporation, made shipments to persons in Louisiana from North Carolina and West Virginia during the same month. Should the information be forwarded from the state where the shipper's office is located, or from the state from which each shipment is made? Under these circumstances, it would be difficult to fix a place where the duty to forward reports *from* can be said to have arisen. The only definite locality referred to in the statute is the place which the reports should have been forwarded *to*.

We submit that the duty to "forward to" the proper state official the required reports is a duty to get the reports to such official by any available means. Hence the offense of failure to forward to the official the required memoranda occurs in the district to which reports should have been made, in this case the Eastern District of Louisiana.

CONCLUSION

It is respectfully submitted that the decision of the District Court is erroneous and that the question presented by this appeal is a substantial one which should be settled by the Supreme Court.

PHILIP B. PERLMAN,
Solicitor General.

APPENDIX A

The Court's Decision

THE COURT: The Statute provides that any person selling or disposing of cigarettes in interstate commerce whereby such cigarettes are shipped to other than the distributor licensed by or located in the state taxing the sale or use of cigarettes shall, not later than the tenth day of each month, forward to the Tobacco Tax Administrator of the state into which such shipment is made a memorandum or a copy of the invoice covering each and every such shipment of cigarettes made during the previous calendar month into said state, the memorandum or invoice in each case to include the name and address of the person to whom the shipment is made, the brand and quantity thereof. The duty imposed by the statute is the duty to forward to the Tobacco Tax Administrator this memorandum or report.

I think it is clear that the law is as stated in New York Central-Oxford New Haven Railroad vs. United States, 166 Federal 267, at 269. "When an offense consists of an omission to do an act required by law, the commission of the offense necessarily takes place where the act ought to have been done." I think it is very clear here that the act required to be done, namely, the act of forwarding, is required to be done at the place from which the cigarettes were shipped. I cannot conceive that the word "forwarding" has the same meaning or implications as the word "filing."

Where a report is to be filed, of course, it may only be filed at a particular place, usually the office of some public official, such as a tax collector, and the mere failure to send it from some other place would not fix the venue for such a failure at such other place. The cases have uniformly held that the failure to file must be prosecuted at the place at which the filing must have been accomplished.

Now, here the Statute does not say that the information must be furnished or that the report must be filed, but it simply says that it must be forwarded. As I have indicated previously, to my mind implicit in the word "forwarding" or the word "forward" is the proposition that some time will elapse between the forwarding and the receiving and also that some distance must be covered, intervening distance, between the forwarding and the receiving.

I think that it is the duty of the Court not to look for hidden meanings in words or attribute to them some unusual effect or connotation, nor should the Court attribute to Congress some vague or hidden intention with respect to the use of words. In construing statutes it is the duty of the Court to give to words of ordinary usage their common, ordinary, everyday meaning.

Therefore, I find that the motions should be granted; and the informations should be dismissed as to the movers for the reason that venue is not properly laid in this District, and the offenses if

offenses occurred, was committed at the place from which the cigarettes were sold.

I find further support for my views in this matter in the fact that the law provides that the report or memorandum must be sent within ten days after the end of the month, not later than the tenth day of each month, which would mean not later than ten days after the end of the preceding month. There is no stipulation, no provision as to when it shall be in the hands of the authorities.

Now, ordinarily where the duty is to file, the law fixes a definite time within which the filing must be accomplished so that the duty is the duty to perform an act at a particular place within a particular time. Here that time is fixed not later than the tenth of the month. So I think that that is very significant; you must forward the memorandum within that particular time and the law makes no provision with respect to the time within which it must be received by the taxing authority.

Therefore, the motions are granted, and the indictments are dismissed as to the movers.

☆ U.S. GOVERNMENT PRINTING OFFICE 1962—215849/P.O.97

STATEMENT AS TO JURISDICTION

(Filed June 17, 1952)

(Number and Title Omitted)

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, and Rule 37(a) of the Federal Rules of Criminal Procedure, the United States submits its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgments of the District Court dismissing the indictments filed below.

OPINION BELOW

The oral opinion of the District Court is not yet reported. A copy of the stenographic transcript thereof is annexed hereto as Appendix A.

JURISDICTION

The minute orders of the District Court dismissing the indictments were entered May 20, 1952. The jurisdiction of the Supreme Court to review on direct appeal an order of the District Court dismissing an indictment, where such dismissal is based on a construction of the statute on which the indictment is founded, is conferred by the Criminal Appeals Act, 18 U.S.C. 3731. See also Rule 37(a)(2), F. R. Crim. P. See *United States* v. *Anderson,* 328 U.S. 699.

QUESTION PRESENTED

The Tobacco Tax Act makes it an offense for anyone, who has shipped cigarettes in interstate commerce to persons other than distributors in a state taxing the use of cigarettes, to fail to forward to the tobacco tax administrator of the state of shipment a memorandum or copy of the invoice covering each shipment. The question presented is whether venue of the offense of failure to forward to the proper official the required reports lies in the district where such official is located.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article 3, Section 2, Clause 3 of the Constitution provides:

> The Trial of all Crimes, except in cases of impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crime shall have been committed; * * *.

The Sixth Amendment to the Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, * * *.

Public Law 363, 81st Cong., 1st sess., 63 Stat. 884, 15 U.S.C. 375, et seq. commonly known as the

Jenkins Act or the Tobacco Tax Act, provides as follows:

To assist States in collecting sales and use taxes on cigarettes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That as used in this Act the term—

(a) "person" means any individual, partnership, corporation, or association;

(b) "disposing of" means any transfer for profit;

(c) "cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco;

(d) "licensed distributor" means any person authorized by State statute or regulation to distribute cigarettes at wholesale or retail;

(e) "use," in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes;

(f) "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.

SEC. 2. Any person selling or disposing of cigarettes in interstate commerce whereby such cigarettes are shipped to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes shall, not later than the 10th day of each month, forward to the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every such shipment of cigarettes made during the previous calendar month into said State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

SEC. 3. Whoever violates the provisions of this Act shall be guilty of a misdemeanor and shall be fined not more than $1,000 or imprisoned not more than six months, or both.

STATEMENT

Two separate indictments charging violations of the Tobacco Tax Act were returned in the United States District Court for the Eastern District of Louisiana against (1) Purchasing Corporation of America, a Virginia corporation, and its individual officers, and (2) Joseph H. Wilson, doing business as Cooperative Buying Service. The indictment against the corporation and its officials charged that defendants, having shipped cigarettes

from North Carolina and West Virginia to persons in the State of Louisana who were not licensed distributors of cigarettes, failed to forward to the Collector of Internal Revenue for the State of Louisiana a memorandum or copy of the invoices covering each shipment. The indictment against Wilson was in five counts, charging similar offenses in five separate months, each of which alleged that Wilson, having shipped cigarettes from North Carolina to non-distributors in Louisiana, failed to forward to the Louisiana Collector the required memoranda or invoices.

Each of the defendants moved to dismiss the indictments for lack of jurisdiction, on the ground that the offenses charged had not been committed within the jurisdiction of the District Court for the Eastern District of Louisiana. The two cases were consolidated for argument, and the District Court dismissed both indictments for lack of jurisdiction.

The District Court held that the duty imposed by the Tobacco Tax Act to forward to the appropriate state official the required records of shipment was not the equivalent of a duty to file such records with the appropriate official, and hence that the offense of failure to forward to the state official the necessary reports occurred in the district from which the shipment was sent, rather than in the district of the office to which the reports were to be forwarded.

THE QUESTION IS SUBSTANTIAL

The Tobacco Tax Act requires persons making interstate shipment of cigarettes to "forward to" the appropriate state official of the state to which the cigarettes are shipped memoranda or invoices of each shipment. We submit that the words "forward to" necessarily carry the implication that the required information be furnished to the appropriate official, and contemplate that such official receive and have such information.

The purpose of the statute, apparent on its face, is to provide a means whereby the taxing authorities in the state to which the cigarettes are shipped will be given information that will enable them to enforce state cigarette use taxes. Manifestly, the intent of the statute is to have the information in the hands of the appropriate state official. It is unimportant to the purpose of the statute how the required information is sent; whether it is delivered in person, by messenger, or through the mails. So long as the information reaches the state official, the literal requirements and the purpose of the statute have been met. The words "forward to" are thus used in the statute in the sense of "report to" or "provide".

This conclusion is buttressed by the legislative history of the Tobacco Tax Act which shows that the words "forward to" were understood to mean, "supply," "furnish", or "report to". Thus the House Report on the bill states (H. Rep. 416, 81st Cong., 1st sess., p. 1):

The purpose of this bill is to assist the States in collecting State-imposed sales and use taxes on cigarettes.

For the purpose of accomplishing this objective the bill provides that any person who sells or otherwise disposes of cigarettes in interstate commerce (where shipment is made to other than a distributor licensed by or located in the State of designation) *must provide the tax administrators* in the State into which the shipment is made necessary data upon which to base assessment and collection of the State cigarette tax. The specific information required by this bill is a memorandum or a copy of the invoice containing the name and address of the person to whom the shipment was made and the brand and the quantity of the shipment.

The bill would place no additional burden whatever upon anyone shipping cigarettes to a ditsributor licensed by or located in the State into which the shipment is made. It would *require information to be furnished* from only those establishments which ship cigarettes to consumers in taxing States from locations outside the State border. (Italics supplied.)

The Senate Report (S. Rep. 644, 81st Cong., 1st sess., p. 1) states:

It would only require information *to be supplied* by establishments which ship cigarettes

> across a State border to consumers in States imposing a tax on cigarettes. (Italics supplied).

Senator George, in charge of the bill, explained its purpose on the floor of the Senate as follows (95 Cong. Rec., 14016, 14017):

> Under the bill, shipments made by anyone to a regular dealer in cigarettes, or to anyone authorized to make sales of them, are not to be reported in all. No additional burden whatever is placed on the shipper. It is only when he ships to unlicensed and unregistered and undesignated establishments within a State *that he must furnish a copy of the invoice,* or a mere statement, if he wants to, *to the taxing authority of the State* into which the cigarettes are shipped. He must do that within 10 days after the end of each month in which he may have made such shipments. (Italics supplied.)

Representative Doughton in charge of the bill in the House (95 Cong. Rec., p. 6350) states:[1]

---

[1] See also debates in the previous Congress on H.R. 5645, 80th Cong., 2d sess., with respect to a similar law containing the same phrase requiring the shipper to forward reports to the appropriate state official. The bill was described as requiring the shipper "to file with" (94 Cong. Rec. 6708); "to report to" (94 Cong. Rec. 6710), or to "make a report" (94 Cong. Rec. 6719).

> A number of the States have laws imposing a tax on cigarettes. This bill *imposes the duty* upon the distributors of cigarettes in those States *to furnish to the tax authorities* of the States affected and to which the cigarettes are shipped information as to the consignee and the number of cigarettes shipped; in other words, information upon which the taxing authorities of a particular State *may enforce its own tax* laws and collect the taxes that are imposed or levied by the State.

The District Court read the statute as if it contained merely the word "forward". The phrase used is "forward to". That connotes a requirement that the information reach the appropriate official. There is a manifest difference between "drive" and "drive to". Equally, there is a difference between "forward" and "forward to". Cf. cases in which a common carrier who has agreed to forward freight to a destination has been held liable for failure of delivery, even though such failure is the fault of a connecting carrier. *Colfax Fruit Co.* v. *So. Pac. Co.*, 118 Calif. 648; *Davis* v. *Jacksonville Southeastern Line*, 28 S.E. 965, 968 (Mo.); *Christenson* v. *American Express Co.*, 15 Minn. 286.

It is well established that, where reports are to be filed with, or made to, a particular official, the offense of failure to do the required act occurs at the place where the report is to be received or filed.

Rumely v. *McCarthy*, 250 U. S. 283; *United States* v. *Lombardo*, 241 U.S. 78; *New York Central and H. H. Railway Co.* v. *United States*, 166 Fed. 267 (C.A. 2). In connection with the filing of income tax returns, 26 U.S.C. 2053(b)(1) provides in pertinent part that income tax returns of individuals "*shall be made to* the collector for the district in which is located the legal residence * * *" of such individual. (Italics supplied.) It was held in *Wampler* v. *Snyder*, 66 F. 2d 195 (App. D.C.), that the words "shall be made" as used in the statute are an equivalent of "shall be filed." And in *Bowles* v. *United States*, 73 F. 2d 772 (C.A. 4), it was held that the failure to make the return occurred in the district where the return was to be filed, the court stating (p. 774):

> The defendant being a resident of the District of Columbia, it became his duty to make his income tax return to the Collector at Baltimore, Maryland, and *failure to make such return* constituted an offense within the District of Maryland. (Italics supplied.)

Since "forward to" has, and was intended to have the same meaning as "making report to" or "filing with", the offense of failure to forward to the proper state officials the required information concerning interstate shipment of cigarettes likewise occurs in the district where the state official has his office.

Any other construction of the venue of the offense will seriously hamper the enforcement of the Tobacco Tax Act. The District Court seems to have assumed, on its construction of the statute, that the duty to forward reports must necessarily arise in the state from which shipment is made. However, since the reports need not be made until the 10th day of the month following the shipment, the place of shipment does not necessarily fix the place of the duty to forward the report. In the instant case, the indictment against the Purchasing Corporation of America alleges that the corporation, a Virginia corporation, made shipments to persons in Louisiana from North Carolina and West Virginia during the same month. Should the information be forwarded from the state where the shipper's office is located, or from the state from which each shipment is made? Under these circumstances, it would be difficult to fix a place where the duty to forward reports *from* can be said to have arisen. The only definite locality referred to in the statute is the place which the reports should have been forwarded *to*.

We submit that the duty to "forward to" the proper state official the required reports is a duty to get the reports to such official by any available means. Hence the offense of failure to forward to the official the required memoranda occurs in the district to which reports should have been made, in this case the Eastern District of Louisiana.

CONCLUSION

It is respectfully submitted that the decision of the District Court is erroneous and that the question presented by this appeal is a substantial one which should be settled by the Supreme Court.

PHILIP B. PERLMAN,
Solicitor General.

APPENDIX A

The Court's Decision

THE COURT: The Statute provides that any person selling or disposing of cigarettes in interstate commerce whereby such cigarettes are shipped to other than the distributor licensed by or located in the state taxing the sale or use of cigarettes shall, not later than the tenth day of each month, forward to the Tobacco Tax Administrator of the state into which such shipment is made a memorandum or a copy of the invoice covering each and every such shipment of cigarettes made during the previous calendar month into said state, the memorandum or invoice in each case to include the name and address of the person to whom the shipment is made, the brand and quantity thereof. The duty imposed by the statute is the duty to forward to the Tobacco Tax Administrator this memorandum or report.

I think it is clear that the law is as stated in New York Central-Oxford New Haven Railroad v. United States, 166 Federal 267, at 269. "When an offense consists of an omission to do an act required by law, the commission of the offense necessarily takes place where the act ought to have been done." I think it is very clear here that the act required to be done, namely, the act of forwarding, is required to be done at the place from which the cigarettes were shipped. I cannot conceive that the word "forwarding" has the same meaning or implications as the word "filing."

Where a report is to be filed, of course, it may only be filed at a particular place, usually the office of some public official, such as a tax collector, and the mere failure to send it from some other place would not fix the venue for such a failure at such other place. The cases have uniformly held that the failure to file must be prosecuted at the place at which the filing must have been accomplished.

Now, here the Statute does not say that the information must be furnished or that the report must be filed, but it simply says that it must be forwarded. As I have indicated previously, to my mind implicit in the word "forwarding" or the word "forward" is the proposition that some time will elapse between the forwarding and the receiving and also that some distance must be covered, intervening distance, between the forwarding and the receiving.

I thing that it is the duty of the Court not to look for hidden meanings in words or attribute to them some unusual effect or connotation, nor should the Court attribute to Congress some vague or hidden intention with respect to the use of words. In construing statutes it is the duty of the Court to give to words of ordinary usage their common, ordinary, everyday meaning.

Therefore, I find that the motions should be granted; and the informations should be dismissed as to the movers for the reason that venue is not properly laid in this District, and the offenses, if

offenses occurred, was committed at the place from which the cigarettes were sold.

I find further support for my views in this matter in the fact that the law provides that the report or memorandum must be sent within ten days after the end of the month, not later than the tenth day of each month, which would mean not later than ten days after the end of the preceding month. There is no stipulation, no provision as to when it shall be in the hands of the authorities.

Now, ordinarily where the duty is to file, the law fixes a definite time within which the filing must be accomplished so that the duty is the duty to perform an act at a particular place within a particular time. Here that time is fixed not later than the tenth of the month. So I think that that is very significant; you must forward the memorandum within that particular time and the law makes no provision with respect to the time within which it must be received by the taxing authority.

Therefore, the motions are granted, and the indictments are dismissed as to the movers.

CERTIFIED: A true and correct record of proceedings in said case, made by me at New Orleans, Louisiana this 20th day of May, 1952.

[Signed] WALTER H. HICKMAN
Walter H. Hickman
Official Court Reporter

☆ U.S. GOVERNMENT PRINTING OFFICE 1952—215850/P.C.98